IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No : 419 of 1999

with

CRIMINAL REVISION APPLICATION No : 464 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANUBHAI VASTABHAI KATARIYA

Versus

STATE OF GUJARAT

Appearance:

MR BB NAIK for Petitioner

MR BY MANKAD ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/09/1999

ORAL JUDGEMENT

#. Rule in both the Criminal Revision Application. Mr.B.Y.Mnkad waives service of rule.

#. Considering the nature of litigation pending and number of accused who are under trial prisoners in the Sessions Case, pending before the learned Sessions Judge, the matter is taken up for final hearing by consent.

#. The petitioner is the original accused No.4 in Criminal Case registered at Khavada Police Station vide C.R. No : 15/98. On completion of investigation, the

Police filed Chargesheet against all accused mentioned in

the Chargesheet and as the some of the alleged offences are punishable with the extreme penalty, the case against the applicant, along with the other accused, has been committed to the Court of Sessions of District Kutch at Bhuj. Two Sessions Cases are registered as some of the accused are chargesheeted by a supplementary chargesheet and Sessions Cases are registered vide Sessions Case No : 106/98 and 57/99, respectively.

#. The learned Sessions Judge of Kutch-Bhuj, after committal, was intending to frame charge against the accused and the present petitioner had applied vide application Exh.29, that Court of Sessions should not frame any charge against him under Section 227 and 228 of CrPC and prayed that he should be discharged from the offences, alleged to have been committed by him under Section 227 and 228 of CrPC. The revisioner of Revision Application No : 464 / 99 had also applied along with other accused for discharge vide joint application Exh.77. The applications preferred under Sections 227 and 228 of the Code of Criminal Procedure, filed by these accused persons (Exs. 29 and 77), were heard by the learned Sessions Judge of Kutchha-Bhuj and vide order dated 27th July, 1999, the learned Judge, dismissed both these applications.

#. Feeling aggrieved by the order rejecting the application Ex.29, the original accused No . 4 has filed Revision Application No : 419/99 and original accused No. 7 and 9 and the accused brought on record by a supplementary chargesheet namely Ramesh Dharansinh

Solanki, jointly preferred the above Revision Application No : 464/99. The petitioner original accused No.4 (hereinafter referred to as `accused No.4' for the sake of convenience) is a accused - Officer serving with the Forest Department as Class-I Officer and was serving at the relevant time when the alleged offence was committed, as Dy.Conservator of Forest in the Eastern Division of District Kutch and the revisioner of Revision Application No : 464/99 are also Forest Officials. The petitioner No.1 of Criminal Revision Application No : 464/99 is a Forester and rest of the two applicants are Forest Guard. It is not a matter of dispute that all the petitioners were present near the spot of incident at relevant time and date in the capacity of Government Servants and all the four are Civil Servants or say Public Servants within the meaning of Sec.21 of IPC. They were on the spot of

event, on account of their staff, working in the Forest Division of West. On going through the record, it transpires that one Mr.Vakani who is also accused and chargesheeted for the alleged offence, was heading that Division and he was Asstt. Conservator of Forest of Forest Division West of District Kutch, at that relevant time.

#. I would like to point out the case put forward by the police against all the accused in the chalan filed before the Criminal Court, so that the nature of allegations against the present petitioners and the case of prosecution against the present petitioners can be appreciated in proper perspective.

#. The above case of the prosecution in nutshell is narrated for the purpose of appreciating the case of both these Revision Applications, second part is more relevant

for the purpose. It can be said that the present applicants have to face the trial, as they had abetted the alleged crime and as they failed in not performing their respective duties, by illegal omission. The petitioners have abetted the crime, in view of the Secs. 107 and 108 of the Code of Criminal Procedure. In the incident, one Bavaji Jadeja is murdered by a group of assailants who was inimical to them. This Bavaji was one of the informant to the Forest department. According to the say of the prosecution, he had given some information to the Conservator Forest, Mr.Shukala through one of the responsible citizen of District : Kutch Bhuj. It is on the record that Mr.Anup Shukala,an IFS Officer, was heading the Forest Circle of District : Kutch and had directed Mr.Vakani to act in response to the information given by Bavaji Jadeja. Mr.Vakani was told that he should proceed to village Loriya and meet Mr.Bavaji Jadeja before 12.30 and he was also directed to act on receipt of information given by Bavaji Jadeja. It is the case of the prosecution that accused No.4 Dy.Conservator of Forest of Forest Division (East) was also asked by Mr.Anup Shukala that he should reach to village Loriya and meet Mr.Vankani. he was also asked to help Mr.Vakani in his duties. One Dy.Conservator of Forest Mr.Varma was also similarly directed by Mr.Anup Shukla, the totality in this regard satisfactorily indicates that Bavaji Jadeja was to give some information with regard some Forest offence committed in Forest Division (West). It is not necessary to narrate the chain of events, at this stage, but it is important to note that all the Forest Officials chargesheeted by the Police, were present at the scene of incident, where Bavaji Jadeja was murdered. According to the case of the petitioners, especially, accused No.4, is that while dealing with the application filed by him in the Court of learned Sessions Judge, under Sections 227 and 228 of the Cr.P.C., the learned Sessions Judge has not considered vital relevant aspect, though they were brought to the notice of the learned Sessions Judge, during the course of submission, which goes to the root of the matter of the case. The application Exh. 29 is an application given by Accused No.4. The petitioners of Second Revision Application were undisputedly serving under the accused No.4 in the same Division and were accompanying Mr.Katariya on duty with Mr.Vakani, as per the instructions received by him, from the higher officer i.e. Mr.Anup Shukala, Conservator of Forest, heading the Circle.

#. The submissions made by the learned counsel appearing for the petitioner Mr. Katariya, accused No.4, Mr.B.B. Naik is adopted by Mr.Dave, when he was arguing his

Revision Application. Mr.Naik has submitted at length but on summary submissions can be divided in four major parts. Under all these four parts. Mr. Naik ventilated the grievance of accused No.4. In the first part Mr.Naik has submitted that the learned Sessions Judge has narrated some wrong fact and this wrong narration has resulted into an incorrect decision. Second main grievance that the learned Sessions Judge has assumed or presumed many things for which he was not authorised legally. The third part of grievance is that the learned Sessions Judge has equated the case of accused No.4 and 5. The accused No.5 is Asstt. Conservator Mr.Vakani, heading the Western Division and was holding his own private fire arm namely revolver at the relevant point of time. While dealing with the case of the accused Nos.4 & 5 equally and paralelly, the lower court has caused some prejudice to the accused No.4 and last part of the grievance is that the learned Sessions Judge has not specifically mentioned in its order that which of the ingredients in the police papers links the accused No.4 with the crime, especially crime committed by abetting the original accused.

#. Mr.Naik submitted that accused No.4 was knowing the fact of informing Bavaji of group headed by accused No.21 Mohan Bhanusali, or the enimocity between them, without direct evidence is presumed. The statutory duties enumerated in the Forest manual and the Act, or the protections, otherwise available to the Civil Servants, are also not considered. The learned Sessions Judge, according to Mr.Naik, has erred in holding that no conscious steps were taken, or no attempt was made even in preventing the forest crime. Roll of a Conservator is not considered conveniently and ignored. Non performance of duties or exercise of power, as higher officer by accused No.4, is an illegal inference and not based on the fact available on record. Mr.Naik has submitted that this Court has not obliged to evaluate the evidence nor the Sessions Judge is obliged to appreciate the evidence available on record, while dealing with the application filed under Sections 227 and 228 of the Code of Criminal Procedure. The plain careful reading of the police papers, including the documents available on record, should be done and it is must. On the strength of totality of the facts available on record, the Court should record its finding and the learned Sessions Judge has erred in not doing so.

##. Mr.Naik has taken me through the police statement of all important witnesses including eye witnesses who are named in the chargesheet. The documents produced by the

forest officials including one of the accused, the Assistant Conservator of Forest Mr.Vakani during the course of investigation are also referred. Looking to the police papers, the prosecution relies on the statement of one Mr.Yogendra L. Verma, a Forest Officer, who was dealing with the vigilance cell in the concerned forest circle. Though Mr.Naik has tried to evaluate all these witnesses to some extent during his submission, this Court can ignore this submission, but the Court has to consider the statements as it they are. The applicants should not be asked to face the trial only because they were present at the spot of the incident and the investigating agency found the conduct or behavior of the petitioners unusual by running away from the spot of incident. The case of the prosecution so far as the present petitioners are concerned, as stated above, is under Section 107 and 108 of Indian Penal Code. Section 107 is defining act which can be said to be an abetment. It says that a person can be said to be an abettor if he does a particular thing and act in aiding the crime committed. To have more light on the words "Abetment" and "Omission" with special reference the word "Duty". I would like to reproduce Section 107 and 108 of Indian Penal Code as under;

"107. Abetment of a thing :- A person abets the doing of a thing, who -

First - Instigate any person to do that thing; or

Secondly- Engages with one or more than person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

108. abettor A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

##. When a query was raised, Mr.Mankad, learned APP has fairly conceded that the case against the present petitioners solely bank on the clause "thirdly", means

according to the prosecution, the petitioners had intentionally aided by illegal omission,and overtact or participation in the offence committed against Bavaji Jadeja is not alleged against any of the petitioners so that the case of intentional aiding "by an act" is missing against the petitioners. It is the case of the prosecution that by doing the illegal commission, the petitioners have abetted the main offenders who have committed the murder of Bavaji Jadeja and other offences allegedly committed by other accused, who are referred in the first part of police chalan filed under Section 173 of Code of Criminal Procedure. The petitioners alleged to have aided by not taking due care and / or caution. It is also alleged that though one of the forest officers was holding a fire arm, has not cared to use it inspite of request of one of the witnesses viz. Makbul. This Makbul has stated that he had requested accused No.4 and 5. It is argued by Mr.Mankad, learned APP that accused No.4, as superior in rank, was otherwise bound to direct accused No.5 to use the fire arm. Whether in absence of any positive police statement on record, will it be legal to presume that accused No.4 had any knowledge of the fact that accused No.5 was holding a fire arm, and the same is loaded with ammunition. For the sake of arguments, even if so assumed that accused No.4 was aware of this fact, whether alleged inaction on the part of the accused No.4 is satisfactorily established by the investigating agency, prima facie, is the question. There is nothing on record under which it can be said that the accused No.4 had not said anything about the use of the fire arm to accused No.5. It is also not on record that accused No.4 was authorised to give such direction to accused No.5 who was holding his own private revolver to save a person or persons other than the accused No.5 himself. Mr.Naik has rightly submitted that the learned Sessions Judge has erred in not appreciating two material facts viz (i) that the truck arrived at the spot of incident with a group of 60 to 70 assailants with weapons had dashed with the jeep car of accused No.4. It is not the matter of dispute that the jeep car of accused No.4 was damaged because of the hit given by the truck reached to the spot and (ii) that one of the forest officials Ratneshwar had sustained injuries, may be simple or superfluous, by fire arm on or near his neck. Mr.Y.L. Verma has stated about this in his statement. Mr.Mankad, learned APP has fairly conceded that though injury certificate of Forester Mr.Rateshwar is not on record today with the police chargesheet but it is a fact that Rateshwar has sustained some injury and the same was because of fire arm used by one of the assailants accused who elighted from the jeep car and / or from the truck

reached to the spot subsequently.

##. The prosecution has tried to bring out the case that the crowd had come to the spot only to finish Bavaji Jadeja and / or his associates or friends and the Forest Officials have failed in protecting them though Bavaji Jadeja was informant of the department of the petitioners but it seems that group had rushed to the spot to create a terror so that anybody who intends to prevent the forest offence, must be taught lessons so they dare not try again to such an extent. Mr.Naik has submitted that the statements of prosecution witnesses should be read in that light and the learned Sessions Judge has failed in doing so.

##. It is further argued by Mr.Naik that the applicants (accused) were present on the spot but had no connection with actual commission of the offence committed by the assailants who had come to the spot in two above referred vehicles viz. jeep car and the motor truck. Clause `thirdly' of Section 107 is relevant again as it is the case of the prosecution that the applicants are abettors for illegal omissions by not performing their duties. It is not necessary to refer each argument advanced by the learned counsel appearing for the parties because the same can be appreciated even during the course of discussions.

##. A plain meaning of word duty carries various meanings but so far as the present case is concerned, as argued, meaning or the legal or obligatory duties only can be considered as applicants were on duty upon instructions by the superiors. As per Dictionary the word Duty mean :- (i)

"(1) that which one is expected or required of one; characterized by doing one's duty : a dutiful citizen; a dutiful child,

2. the binding or obligatory force of that which is morally or legally right; moral or legal obligation,

3. action of a task required by one's position or occupation; function; the duties of a clergyman,

4. the respectful and obedient conduct due to a parent, superior, elder, etc.

5. an act or expression of respect;

6. a task or chore which one is expected to perform, It is your duty to do the dishes.

7. Mil a. an assigned task, occupation or place of service. etc. :

##. It is argued that the learned Sessions Judge has committed an error in interpreting the word duty and plain reading of the order takes us to conclusion that the learned Sessions Judge has not interpreted the word duty only as legal duty or obligatory duty, in capacity of public servant but, has also the moral duties or social obligations in a very broad compass. Mr.Naik has pointed out that duties of accused No.4 are defined in forest manual. Rest of the forest officials are also entrusted certain duties and their duties are also enumerated in the forest manual and there is no iota of evidence on record under which it can be said or inferred that any of the petitioners including the accused No.4 has violated any of the duties cast on them by the manual. The relevant portion of the manual if quoted would be helpful in recording logical conclusions.

"(c) Deputy Conservators of Forests :

Deputy Conservators of Forests are responsible, for the administration of each forest Division and the execution of works in their charge, including the Five Year Plan Schemes. They arrange for the exploitation, recreation and protection of forests according to sanctioned Working Plans and other orders. They conduct sales, enter into contracts, supply material to departments and the public, realise revenue and control expenditure. They deal finally with forest offence cases.

(d) Deputy Conservators of Forests, working plans :

A working plan Deputy Conservator of Forests' work consists of the survey of growing stock, enumeration of trees and analysis of stems to determine the rate of growth of the principal species with special reference to the soil and climatic conditions of each locality and, on the basis of data so collected, preparation of working plans for felling, regeneration, silvicultural treatment and protection of forest, while providing for the due exercise of the

rights and privileges of the people including grazing of cattle. These officers are also required to scrutinise control forms kept in connection with the Working Plans in the Divisions of each Circle and to conduct research in subjects specially allotted to them in collaboration with the Silviculturist cum Forest Utilization Officer.

(e) Deputy Conservators of Forests Extension:

The Deputy Conservators Of Forests, Extension, work according to the orders issued by the Conservators of Forests concerned from time to time in furtherance of the objectives of extension forestry, raising plantations of fuel wood in Government waste lands and raising suitable trees along the roadsides, canals and railways.."

"Foresters and guards on Special Duty :

Foresters and Guards employed on jobs like afforestation works, checking depots, sale deposits, sawmill, etc. shall work according to the rules in vogue and orders of the superior officers."

##. There is no evidence under which it can be inferred that any of the applicants including accused No.4 was knowing the registration number of the said vehicle viz. truck which was detained by Mr.Vakani before couple of minutes earlier to the incident under the information of deceased Bavaji Jadeja. There is no evidence in the police papers under which it can also be inferred that accused No.4 or his forest guard sitting with him in the jeep car had seen any of the assailants who had reached to the spot in the jeep car prior to the incident in the nearby area where Bavaji Jadeja was assailed. It is there on record that son of accused No.21 Mohan Bhanusali had some conversation with the Assistant Conservator of Forest Mr.Vakani at one nursery where two trucks loaded with charcoal were detained and he had gone there in a Jeep Car and from that very jeep car 10 to 12 persons reached the spot before the incident. The police papers say that the accused No.4 or his subordinates who were in the jeep car had never seen jeep car of the accused persons prior to their arrival at the spot of incident. So, it would not be legal or proper to assume or presume

anything against the petitioners that immediately on the arrival of the jeep car and / or truck, accused No.4 should have ordered the staff available on the spot to arrest those persons or any of them. On the contrary, according to the police papers, in couple of minutes after arrival of the jeep, incident started. Arrival of truck had given indication that the group was in a furious mood. Dashing of the motor truck with the jeep car of the forest officer whether was accidental or intentional is the question. The petitioners are chargesheeted because the investigating agency found them responsible for the offence, as according to the agency, they have committed the offence of abetment. Section 108 of Indian Penal Code defines abettor. The prosecution intends to read explanation (1) under section 108 of IPC with clause `thirdly' of Section 107 of the IPC. Considering the case law on the subject, this Court cannot appreciate the evidence available on police record and if this Court does this venture then it may adversely prejudice the case of either party who has to face or to prosecute the trial. So modus of the applicant accused was of an abettor or not, should not be concluded on appreciation of evidence, but simultaneously, the Court cannot ignore the plain reading of the papers of investigation and the picture emerges from the story put forward by the prosecution. Say of the accused also cannot be ignored totally. Every citizen is bound to omit certain things which is illegal to him but the question is whether anybody is bound not to omit merely because thing which was required to be acted upon was legal. The petitioner being forest officials were not bound to arrest the person who commits the criminal offence. This Court is in agreement with the submission that any private person may arrest or caused to be arrested any person who in his presence commits non bailable and cognizable offence or also can arrest any proclaimed offender without unnecessary delay. But it would not be legal to say that such private person is bound to do certain act which he might be otherwise entitled to do. Interpretation of Section 43 of CrPC in special reference to Section 43 of IPC, would go to show that it is a privilege of a private person to do an act of arrest of the offender referred to in this section but it is not his legal obligation to do so. Mr.Naik has rightly argued that if the logic presented by prosecution is accepted as it is, then every citizen in whose presence a non bailable and cognizable offence, if committed is either witness or the offender. If we ignore all the submission of Mr.Naik to the effect that in reality the petitioners were witnesses to the incidents and they are implicated in the crime on

resumption of duties by new investigating officer even then, prima facie reading of police papers do not contain anything under which prima facie this court can say that the petitioners have missed any legal obligation cast on them. Mr.Naik has successfully pointed out that the statement of accused No.4 and other forest officials were recorded by the investigating officer but after couples of hours, the officer investigating the crime was transferred and the officer substituted vice the original officer (first I.O.) has treated the petitioners including the accused No.4 as an abettor of the crime. The word legal obligation is interpreted by various courts but the effective and impressive interpretation made by the Andra Pradesh High Court in case of HYDERABAD STOCK EXCHANGE LTD VS. RANGNATH RATHI AND CO. reported in AIR 1958 (AP) page 43 is more helpful in interpreting this legal concept. While interpreting the High Court has observed that;

"(21) The next question to be determined is whether there exists an obligation in favour of the plaintiffs as against the Exchange not to be called upon to answer the complaint or avoid answering the complaint lodged against them. The expression `Obligation' has been defined in S.3 of the said Act as including every duty enforceable by law. It is held in Bhudeb Mookerjee V. Kalachand Malik, 34 Cal. LJ 315 : (AIR 1921 Cal 129) (B). that the word obligation in S.54 of the Specific Relief Act may be taken to be a tie or bound which constrains a person to do or suffer something.

It implies a right in another person to which it is correlated and it restricts the freedom of the obligee with respect to definite acts and forbearances but in order that it may be enforced by a court, it must be a legal obligation and nor merely moral, social or religious."

##. So far as the case on hand is concerned, the papers of investigation must be able to reply that a particular act was expected to be performed in a particular manner and the accused was really obliged to act or to ommit such act in that expected manner but this query is not answered properly by investigating agency. In case reported in S.D.MARATHE V. PANDURANG NARAYAN JOSHI, AIR 1938 Bombay 419, the Bombay High Court has explained the concept of legal or obligatory duty of Government Servant. In the case before the Bombay High Court, the

Medical Officer, the government servant was branded as the abettor of an offences committed by the compounder as he had failed in performing certain duties as in charge of the dispensary.Though the facts of the case before the Bombay High Court is totally different but the ratio propounded by the High Court is still good law because the sequences of the subsequent pronouncement has carried out the same principle as and when the concept of legal or obligatory duty came up for interpretation. It is settled that mere presence at spot of incident, though important, is not sufficient to connect the accused with the crime. The prosecution is bound to show the involvement of the person/s present at the spot. Such presence should be in capacity of an abettor or co accused or contributor or of an accomplice prima facie prosecution should connect the presence with the main offence. It also should show that such connection or link between the main accused is made punishable under IPC or any other penal / statute. Connection or link can be established even by circumstances. If the case of prosecution is of overtact or illegal omission then, such evidence must be on the police papers. The case of the prosecution against accused No.4 and the other petitioners is that (i) they were present and their presence was in capacity of the public servant (ii) Bavaji Jadej and companions were assailed because Bavaji Jadeja was the informant of the forest department, (iii) the petitioners are servant and serving with the forest department (iv) the forest officers including the petitioners might have arranged for sufficient police force before reaching the spot of incident (iv) one of the forest officer viz. Assistant Conservator of Forest Mr.Vakani was armed with the weapon i.e. revolver of his ownership (v) accused No.4 being senior in rank of his own or as stated by one of the witnesses viz. Makbul would have ordered Mr.Vakani to use his fire arm (vi) instead of arresting the persons who had come to the spot, the petitioners run away from the spot and hide themselves in the nearby forest and last one (vii) the petitioners have not cared to shift the injured Bavaji to nearest hospital and none of the petitioners including accused No.4 or Mr.Vankani have informed the police about the incident and though the accused No.4 and the other forest officials (all of them) were holding weapon but they have not cared to use these weapons. But the careful reading of the police papers indicate that none of the petitioners was holding any weapon. It seems that they were not informed in advance nor had anticipated in advance about the eminent danger. Even for the sake of argument, it is accepted that error in assessing the situation is a grave error but the same cannot be equated

with the criminal negligence or omission within the meaning of Section 107 of Indian Penal Code. It is also clear that before the arrival of accused No.4 and his subordinate staff to the spot of incident in couple of minutes after the occurrence, the body of Bavaji Jadeja was lying on the spot and he was dead. So there was no use in shifting him to the hospital and on the contrary, Mr.Naik has submitted that non transfer of body of Bavaji Jadeja may help the investigating agency in the ultimate investigation of the crime committed against said Bavaji Jadeja. Certain things which is not on record, are presumed by the learned Sessions Judge that accused No.4 and 5 were together from the beginning and the conduct of running away from the spot of incident is unlawful neglect or an act which can be termed as escapism as said earlier. This conduct is not unnatural conduct of a person and one has right to survive or say rule of survival, will positively play important part. The number of assailants and the weapons which were found in the hands of the group of assailants also cannot be ignored. The learned Judge while dealing with the discharge application has not considered the velocity of the assault. Accepted principle of self defence is also not considered. Bullet injury on the body of one of the forester is not appreciated in proper perspective. When a person is, prima facie, branded as an abettor then, the injuries sustained by him cannot be ignored.

##. Though the learned APP Mr.Mankad has tried to submit that this Court has no jurisdiction to appreciate the totality or the nature of the evidence available on record, adequacy of the evidence cannot be looked into by this Court and the learned Sessions Judge has rightly said that prima facie, the case against the petitioners is available on record. But when no overt act in the commission of the offence is attributable to any of the petitioners, then it can be legitimately inferred that the prosecution intends to implicate the accused with the crime upon the circumstantial evidence, then, at the time of dealing with the discharge application under Section 227 and 228 of CrPC, the Court is bound to ascertain whether the prosecution intends to rely on a direct cogent circumstances, or on a certain assumption and / or presumption ? It is settled that the suspicious circumstances is not sufficient to link the accused with the crime. This Court would like to refer the case reported in UNION OF INDIA VS. PRAFULLA KUMAR SAMAL AND ANOTHER AIR 1979 Supreme Court Page 366. After considering the details of the events, the Hon'ble Apex Court has said that

** "7. Section 227 of the Code runs thus; "If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground of the proceedings against the accused, he shall discharge the accused and record his reasons for so doing."

The word `not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post-office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to shift the evidence in order to find out whether or not there is sufficient ground for proceedings against the accused. The sufficiency of ground would take within its fold the nature of the documents produced before the court which ex facie disclose that there are suspicious circumstances against the him."

It has further observed (in para 10) that :-

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge;

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case

would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

Further in case of STATE OF UTTER PRADESH THROUGH CENTRAL BUREAU OF INVESTIGATION VS. DR. SANJAY SINGH AND ANOTHER AIR 1994 SCC Crime 1701, it is observed that

** "17. The circumstantial evidence even if accepted in its entirety, as pointed out by the courts below creates only a suspicion of motive. Needless to point out that the motive which induces a man to do any particular act is known to him and to him alone."

It is further observed in para 18 & 19 that ;

18. At the highest, the prosecution can only suggest from the circumstances what is or may be the motive for any particular act. However, motive is not a sine quo non for bringing the offence of murder or of any crime home to the accused. At the same time the absence of ascertained motive comes to nothing, if the crime is proved to have been committed by a sane person but to eke out a case by proof of a motive alone - that too suspicion of motive apparently tending towards any possible crime, is not only a very unsatisfactory but also a dangerous process, because circumstances do not always lead to

particular and definite inferences and the inferences themselves may sometimes be erroneous.

19. When we scrutinise the entire material placed on record, even if unrebutted or totally accepted, we are of the view that they do not make out a case for conviction and the mere suspicion of motive cannot serve as a sufficient ground for framing the charges in the absence of any material, prima facie showing that the particular motive has passed into action and that the accused is connected with that action in question."

##. Thus, in the above view, this court is not inclined to accept the arguments that "as the prosecution agency is subjectively satisfied, the Court is bound to frame the charge and the accused person has to face the trial. Mr. Naik has placed reliance on a judgment reported in case EMPEROR VS. BEPIN BEHARI GANGULY, AIR 1932 Calcutta page 549, wherein, the Calcutta High Court has observed that when the prevention of particular act was not easy or possible then in that event the principle of school, were revolutionary song was sung, cannot be said to have committed an offence of abetment. The Calcutta High Court as said that "

"..... Thirdly, a person is said to abet the doing of a thing who intentionally aids it by an act or illegal omission. The omission must be illegal, and before there can be an illegal omission, there must be a duty cast by the law upon the person said to be guilty of the omission to do something or other. I have asked the Standing Counsel whether he can point to any duty cast upon any one to interrupt songs or to forbid their continuance, and he has not been able to say that the law casts any such duty upon a person presiding at a meeting.

As an illustration, let me tell you this ; Supposing two police officers desire to extort a confession and one threatens the accused persons and the other stands by and does nothing. The one that stands by is guilty of legal omission because as a police officer it is his duty to stop that sort of thing. It is a duty that law puts upon him. But supposing a police officer has a relation who is not a police officer and the police officer gets a confession

in the presence of that relation, then, that relation is not guilty of illegal omission because law does not cast upon an ordinary citizen who is not a police officer any particular duty with regard to an accused person.

An ordinary person has only a moral duty and no legal duty in such circumstances, and if he does not perform it, although his action may be morally reprehensible, it is not an illegal omission. The Standing Counsel suggests that the accused intentionally abetted the offence by an act. The act which is alleged here is the act of permitting. Of course permission can be a positive act. If there was evidence to show that Upen Das said : "Here is a song, I want to sing. May I sing it ?" and if this accused having reason to believe that the song was of an objectionable character, allowed it and Upen sang the songs, that would be an act and specific permission. But it appears to me that simply doing nothing is not an act, and unless there is a duty to do something, you cannot say that it is an illegal omission. The upshot of the matter is this : I'm the judge of law and you are the judges of facts. I am assuming for the purpose of my direction that the accused was present at the meeting when both the songs were sung; I am assuming that everything the prosecution says is true; even then it appears to me that no offence has been made out under the law."

##. Appreciating the say of the learned APP Mr.Mankad, reliance has been placed on the judgment reported in the case reported in CHATRU COPE AND OTHERS VS. EMPEROR, A.I.R. 1918 PATNA 584 Criminal Law Journal 585 (Patna High Court), it is not possible to conclude that the facts of the case on hand are similar to the facts of that case or ratio of this judgment should be made applicable to the facts of this case. Considering the facts of the case, the Court had observed that;

"Penal Code (45 of 1860), S.107 - Abetment
Presence at commission of offence does not constitute abetment unless there is duty to prevent commission of offence.

Mere presence on the occasion of the commitment of an offence does not amount to abetment within the meaning of S.107, unless there is an obligation cast by the law upon the persons

present to prevent the commission of the offence."

##. In the same way, in Patna case, the presence of the accused at the spot of incident was found active presence because wherein, a rape committed in a room, persons who were standing outside were found guilty of the offence of abetment. The case reported in AMAN KUMAR AND OTHERS VS. STATE 1987(2) Crime page 755, Delhi High Court held that the presence of persons standing outside a room has committed the offence of abatement. The learned APP Mr.Mankad has tried to submit that though the Forest officers were not armed with the weapons as there was forest nearby, it was possible for them to have readymade stick by cutting branches of tree, and they would have saved the life of Bavaji Jadeja. I would not like to reply this submission because the other material available on record automatically negatives this submission. As discussed earlier in couple of minutes, the big group of assailants had started the act of assault and the velocity was very high. It is not easy even to cut the strong branch of tree without the help of any sharp weapon normally used for such purpose. There is nothing on record under which this Court can accept this submission of Mr.Mankad, learned APP that accused No.4 was knowing about the fact that the other forest officer Mr.Vankani is holding revolver or such revolver is loaded weapon and he is able to fire at any moment.

##. Some suspicion circumstances if shown even then on such suspicion, the charge cannot be framed. In case of STATE OF BIHAR VS RAMESH SINGH, AIR 1977 Supreme Court Pg.2018, the Apex Court has observed that;

"..... It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilty at the conclusion of the trial. But at

the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceedings against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. ..... "

##. The plain reading of the papers of investigation does not indicate any intention dominant. I agree with the submission that the ratio propounded by the Hon'ble Apex Court through judgment reported in case of RAM KUMAR VS. STATE OF HIMACHAL PRADESH WITH NAIN SINGH VS. STATE OF HIMACHAL PRADESH 1997 Supreme Court page 1965, does not help the respondent - State. Accused No : 4 had tried to produce certain document at the time of hearing of his discharge application and these documents were relevant. But even if these documents are ignored or Court refuses to consider such document, even then the fact does not carry the case of the prosecution to the point of `intentional illegal omission'. The intentional omission must have been done by the accused so that the actual offender can complete the crime or continue with the commission of such punishable act. The Hon'ble Apex Court in case of SMT. MATHRI AND OTHERS VS. THE STATE OF PUNJAB AIR 1964 Supreme Court page 986 has observed that;

".... These persons, it is argued, knew very well that the natural and inevitable consequences of their action was that the persons in possession would be annoyed. It necessarily follows, therefore, according to the learned

counsel, that they had the intention to annoy those persons. The proposition that every person intends the natural consequences of his act, on which the learned counsel relies, is often a convenient and helpful rule to ascertain the intention of persons when doing a particular act. It is wrong however to accept this proposition as a binding rule which must prevail on all occasions and in all circumstances. The ultimate question for decision being whether an act was done with a particular intention all the circumstances including the natural consequence of the action have to be taken into consideration. It is legitimate to think also that when S.441 speaks of entering on property "with intent to commit an offence, or to intimidate, insult or annoy" any person in possession of the property it speaks of the main intention in the action and not any subsidiary intention that may also be present. One of the best expositions of the meaning of the word "intent" as used in the Indian Penal Code was given in a decision of the Bombay High Court in 1900 in Bhagwant Vs. Kedari, ILR 25 Bom 202. Examining the definition of the word "fraudulently" in S.25 of the Indian Penal Code, viz. " a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". Batty, L. observed thus at P.226 of the Report :

"The word `intent' by its etymology, seems to have metaphorical allusion to archery, and implies "aim and thus commotes not a casual or merely possible result - foreseen perhaps as a not improbable incident, but not desired - but rather connotes the one object for which the effort is made - and thus has reference to what has been called the dominant motive, without which the action would not have been taken." "

##. According to Mr.Naik, the judgment of the Hon'ble Apex Court though was brought to the notice of the learned Sessions Judge with some other relevant decisions, the learned Sessions Judge has not cared to consider the principles propounded by the cited judgments. I would like to refer the ratio laid down in the judgment in case of STATE OF MAHARASHTRA VS. PRIAYA SHARAM MAJARAJ AND OTHERS AIR 1997 page 2041. I am of

the view that this helps the submission advanced by the applicant revisioners.

Mr. Naik has further argued that even if it is admitted that there is a moral obligation of an individual, that by itself, without anything more is not sufficient to frame a charge against the person concerned. In support of his argument, he has placed reliance on the decision of the Apex Court in the case of Stree Atyachar Virodhi Parishad v/s Dilip Nathumal Chordia & Another, reported in (1989)1 SCC 715, wherein Apex Court, in para-21, has observed as under :-

"21. The Counsel for the State was equally critical upon the discharge of Nathumal. It was argued that Nathumal being the manager of the family ought to have taken care of Chanda and without his connivance, none would have demanded dowry and put Chanda on fire. It is true that it is his obligation as a manager of the family to protect Chanda and safeguard her rights. We have no doubt that he has failed to perform his moral obligation. But that by itself, without anything more is not sufficient to frame a charge against him. We, therefore, agree with the discretion exercised by the trial Court and leave it at that."

##. Presence of intention is most relevant. An act of running away from the spot of incident does not give any

indication about any intention of the petitioners except that they might have tried to save themselves. It is not the case of the prosecution that forest personnel had tried to trap Bavaji Jadeja or he was taken at the spot of incident and on arrival of the assailants, the petitioners conveniently escaped from the spot so that the assailants can commit the offence qua the body of Bavaji Jadeja and his companions, otherwise, the police would have filed Chalan under Section 173 accordingly and the present petitioners would have been prosecuted for the offence punishable under Section 120(B) read with Section 302 of I.P.Code along with other accused. I agree that the conduct of the accused or some act or omission pleaded by the accused should be scrutinised closely and on close scrutiny if, Court feels that an inference against the accused can be drawn then the Court is at liberty to draw such inference but the Court cannot read between the lines or can interpret the event in its own way. There must be positive circumstantial evidence in the papers of the investigation available on record. In absence of any such positive evidence, the inference against the accused or presumption or assumption either

in favour of the prosecution or against the accused cannot be drawn. It seems that the learned Sessions Judge has given weightage to his moral conviction rather than the legal finding. Even for the sake of argument, if it is accepted that it was the duty of the forest officials to save the informant who is helping the Forest Department and should provide proper cover to his informant, even then also, the nature of offence committed against Bavaji Jadeja and his companions is such, that it would not be proper to interpret that the offence was committed only qua Bavaji Jadeja and his companions. On the contrary, the circumstances speaks that the whole group including the present petitioners were the victim of the anger of the accused who had reached to the spot of incident in two different vehicles viz. the jeep car and the motor truck. Some imprudent behavior or misconduct on the part of the any of the forest officials even for the sake of argument is accepted, even then, there is nothing on record to hold that any of the applicant had intentionally committed any overt act or omission which has resulted into abetment of crime as defined in Section 107 and / or Section 108 of Indian Penal Code.

##. I do not agree with the submission of Mr.Mankad, Learned APP that the statement of Makbul throws light on the fact i.e. intentional omission. On the contrary, the papers of investigation say that at the instance of deceased Bavaji Jadeja, two motor trucks were intercepted loaded with charcoal and they were taken to forest nursery under the division of Assistant Conservator of Forest Mr.Vankani. There is recovery panchnama under which the key of these trucks were also taken by the forest officials and two forest guards were also kept at that nursery. One cannot imagine that a group of 70 - 75 - 80 persons collectively would rush to the nursery and will unload the charcoal and will carry the very one of the trucks to the spot of incident along with the persons armed with the deadly weapons and will assault the entire group drawing panchanma of the spot shown by truck drivers or Bavaji Jadeja. Two contrary facts are there on record. According to the papers of investigation, both the trucks drivers were taken by the forest officials to the spot and some forest officials were busy in drawing panchnama of the place from where the charcoal was taken out of the earth and the prosecution also tried to convince the learned Sessions Judge that Bavaji Jadeja had taken the group of forest officials to the spot of incident. The presence of Bavaji Jadeja at the spot of incident was with his will and wish or against the wish and desire of the forest officials is not matter of much

relevance. Bavaji Jadeja even had gone to the spot of incident as per his wish and will even then, the duty qua Bavaji Jadeja would remain the same so far the forest officials are concerned. But the duty which was required to be performed by the forest officials, in accordance with law and further in accordance with the manual and statue, cannot be said to have been not performed. There was no willful neglect or intentional omission in performing such duty. The plain reading of the order passed by the learned Sessions Judge gives an impression that the learned Session Judge was of the view that in this case, moral duty of the department personnel qua their legal duty was on equal footing but the learned Sessions Judge has not considered certain important relevant aspects e.g. right of each of the applicants to save themselves. It is also there on record that Bavaji Jadeja had died on the spot and removal of the body of Bavaji Jadeja from the spot of incident might have created problem even for the investigating agency and to the petitioners. The Forest officials had immediately informed the superior viz. Conservator in couple of hours after the incident. It seems that they had reported, first to the Conservator of Forest. The statement of Conservator of Forest Mr.Anup Shukala does not indicate any intentional omission of duty qua any of the petitioners. On the contrary, the statement of applicants were recorded by first Investigating Officer as if they are the witnesses to the incident. Mr.Naik has rightly submitted that it can be reasonably inferred that after the arrest, the Second Investigating Officer, must have recorded the statement of the applicants in the capacity of an accused. Then, what had happened to the first statement recorded by the first Investigating Officer ? In nutshell, the submission of Mr.Naik is that the view taken by the learned Sessions Judge is not a legal view nor a balanced view, and on the contrary, the second investigating officer has damaged the case of the prosecution by placing the important witnesses as the accused in the chalan filed before the Court. Without giving any comment on this submission, it can be legitimately said that even the second investigating officer, has not placed the present applicant in the same category of the persons who were real assailants by adding Section 120(B) of IPC against present petitioners. The last column of the chargesheet divides the accused persons in different categories and the present applicants are made accused because of their alleged conduct. The investigating officer has not cared to appreciate the difference between the legal obligation and moral obligation. In the same way, the finding of the learned Sessions Judge is not exactly on the facts

reveled from the papers of investigation. The learned Sessions Judge has not given any cogent reason or reasons under which it can be held that the applicants were responsible to protect Bavaji Jadeja or to arrest all the 70 / 75 / 80 persons armed with the deadly weapons even at the cost of their own lives. As discussed earlier, mere presence at the spot of incident and the act of leaving the place to save their lives and act of not using weapon, if any, looking to the gravity or velocity of the crime, even if it is assumed that applicants or say other accused along with applicants were having weapons, it would not have been possible for them to use such weapons and, therefore, that fact itself would not make any person/s accused of that crime committed even against his/their wish, will, intention though the same is committed in his/their presence and knowledge.

##. Various authorities are cited before me by the learned counsel appearing for the petitioner Mr.Naik and Mr.Mankad, learned APP. But I am inclined to accept that this is not an act of intentional omission which can be equated with the offence of rape committed in police custody by one police personnel when the other is very well present in the police chawki or immediately outside the gate as is sought to be canvassed by the learned APP.

##. I also do not accept the submission of Mr.Mankad, learned APP that because of the limited scope, this Court, while exercising the revisional jurisdiction, a reasoned order should not be interfered. This Court is legally authorised to evaluate the reasons given by the learned Sessions Judge as to whether the reason or reasons given by the lower court is in accordance with the facts available on record. This Court can also appreciate whether law applied by the lower court is correct. I agree that while dealing with such revision application this Court normally has to see that the lower court has properly considered the police record or not. I also agree that the defence version or documents produced supporting the defence version cannot be totally ignored. Careful reading of each paper is required to be made. Incorrect interpretation or description of fact which are not there on police papers, if made then, the same can be corrected to avoid miscarriage of justice. If a group of accused collectively apply to discharge them, then the Court should and has to appreciate the case of each individual and should not dispose of such application considering the gravity of allegations only made against one or some of the applicants. It is the duty of the court that each applicant gets justice individually as if they have applied individually and

their case is argued separately and individual manner. Collective application and collective hearing sometime leads the Court to non application of mind qua some of the applicants. The magnitude of the offence is not at all considered by the learned Sessions Judge. I am of the view that this solitary thing, if would have been considered from different angle, then finding in case of the present applicants would have been otherwise. The provisions of Section 44, 66 and 73 of the Forest Act, 1927 have not been properly dealt with. The learned Sessions Judge has not stated anything as to why and how these provisions applies to the facts of this case e.g. how a Class IV Forest Guard can be held responsible with the Deputy Conservator of Forest. Whether the Guard, unless even specifically ordered even if he is armed with the weapon, can do anything in presence of immediate superior. This questions are not properly dealt with by the learned Sessions Judge. Section 66 of Forest Act, says that the forest officer is bound to prevent the commission of any forest offence. Actually on the spot they were working qua forest offence committed earlier on the information given by Bavaji Jadeja and thereafter, the offence qua entire group was committed by the persons who were, even as per the police papers, responsible for the forest offence. The assault on the body of Bavaji Jadeja and his companions or the jeep car of accused No.4 itself or the body of the other prosecution witnesses are independent offence punishable under IPC, so it is not obligatory on the part of the forest officials to prevent such offences. This depends on other various facts. The facts of this case indicate that, the situation was beyond the control of the forest officials and they were not in a position to arrest any of the accused even under Section 64 of Forest Act, though the forest officers are deemed public servant, within the meaning of Indian Penal Code in view of Section 73 of Forest Act but there is nothing on record to show that any of the applicants had behaved in a manner in which, at the time and spot of the incident, no public servant would have behaved.

##. Where the presence of the petitioner at the spot of event when is not a matter of dispute then, the Court should see that, prima facie, while dealing with the application under Section 227 and 228 that whether this is a case of mere presence or not ? Where there is case which is not only of a mere presence, then in such type of case, the conduct of the accused persons at the spot of incident can be looked into from plain reading of papers of investigation. The conduct previous i.e. prior to the incident / event, during the event and

subsequent to the event are relevant. Such conduct may be by overt act or by way of illegal commission. If the court finds that the element of illegal commission reflected in Section 107 of IPC if found absent, then, it would not be legal to treat such person present at the spot of incident as an abettor. Alleged omissions are neither illegal nor intention. An omission may be an illegal omission but the same simultaneously may not be intentional. If legal but not unintentional omissions should be viewed from different angle. Presumption of some knowledge has no role to play in inferring any intentional illegal omission. There must be some strong evidence and intentional omission if is a legal, or is otherwise not illegal then, the same cannot help prosecution in attributing Section 107 of IPC. If Court finds that there is an element of illegal and intentional omission, only in such cases, accused should be asked to face the trial on merits.

##. In nutshell as discussed hereinabove and in view of the settled legal position, this court arrives at a conclusion that interference in the findings arrived at by the learned Sessions Judge while deciding the application preferred by the applicants under Section 227 and 228 of the CrPC is required as the findings arrived at by the learned Sessions Judge concerned are without proper appreciation of papers of investigation, not supported by evidence on record and are based on assumption and presumptions. The same are also arrived at without properly appreciating relevant provisions of law amounting to error of law resulting into miscarriage of jusitce and therefore the following order is passed.

##. The submissions made by the learned counsel appearing for accused No.4, petitioner of Revision Application No: 419/99 is accepted. The order of learned Sessions Judge, Kutch-Bhuj, dismissing the application Exh.29 dated 27-7-1999, is hereby quashed and set aside. The petitioner - accused No.4 is ordered to be discharged. In the same way, petitioners' petition No.464/99 is also allowed. The applicants of this Revision Application i.e. accused Nos. 7 and 9 and the accused who is chargesheeted by a supplementary chargesheet and designated as accused No.33 - Mr.Solanki who were accompanying the accused No.4 in his jeep car as staff members of the accused No.4, are also ordered to be discharged, as the elements of abetment on account of "illegal omission" is missing on the papers of police investigation.

Rule is made absolute in both the Criminal

Revision Application Nos : 464/99 and 419/99, accordingly.

Copy of this order be placed in Criminal Revision Application No : 464/99.

Date : 10-09-1999 [C.K.Buch, J.]
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FURTHER ORDER

Before the above final order dated 10th September, 1999 could be sent to the Registry for issuance of Farad, the learned APP Mr.Mankad appearing for the State and Mr.B.B.Naik, learned advocate appearing in the Criminal Revision Application No : 419 of 1999 have drawn attention of this Court to the fact that the learned advocate Mr.J.R. Dave appearing for the petitioners in Criminal Revision Application No : 464 of 1999 had made an erroneous statement contrary to the record that petitioner No.2 was working under Accused No.4 (Petitioner of Criminal Revision Application No : 419 of 1999), therefore, under the circumstances, before passing any order, this Court decided to call Mr.J.R.Dave, learned advocate who has argued the Criminal Revision Application No : 464 of 1999. Mr.Dave appeared and has fairly conceded that bonafide mistake has been committed by him. The petitioner No.2, though he is the Forest Guard, was not with accused No.4 (petitioner of Criminal Revision Application No : 419 of 1999). He was with the Assistant Conservator of Forest Mr.Vankani and serving in another division. Mr. Mankad has rightly submitted that the case of the petitioner No.2 is with the other set of accused, even as per the papers of investigation, therefore, simultaneous discussion and decision in this event may not be proper and possible in his case.

Mr.J.R.Dave, learned advocate at that time made a statement at the Bar that the application so far as the petitioner No.2 - Shri Madhudan Noordan Gadhavi is concerned, he may be permitted to withdraw with liberty to file a fresh application for the same purpose with other forest officials or independently and further submitted that prayer advanced on behalf of the petitioner No.2 in Criminal Revision Application No : 464 of 1999 may not be granted and the Criminal Revision

Application No : 464 of 1999 so far as the petitioner No.2 is concerned, only be treated as dismissed as withdrawn. Therefore, pursis dated 17th September, 1999 filed by Mr.J.R. Dave, learned advocate is accepted. The same is taken on record and the order passed in favour of the petitioner No.2 Madhudam Noordan Gadhavi original accused No : 9 on earlier occasion is recalled and the application of this petitioner is treated dismissed as withdrawn with permission to apply afresh as prayed for. Rest of the final order remains unchanged. Farad be sent accordingly.

Date : 21-9-1999 [C.K.Buch,J.]

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